

quinn emanuel trial lawyers | new york



November 29, 2021

VIA ECF

Magistrate Judge Sarah L. Cave
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 1670
New York, NY 10007

Re: *Iowa Pub. Emps.' Ret. Sys. et al. v. Bank of Am. Corp. et al.*, No. 17-cv-6221 (KPF-SLC)

Dear Judge Cave:

We write on behalf of Plaintiffs with regard to two matters: First, Plaintiffs propose a deadline of January 17, 2022 for submission of our sur-sur-reply brief and related supporting materials in connection with our class certification motion. Second, Plaintiffs write to inform the Court of a development regarding one of our experts, Professor Haoxiang Zhu.

Deadline for Sur-sur-reply Materials: On October 25, 2021, the Court ordered that “Plaintiffs may file a five-page sur-sur-reply brief,” exclusive of accompanying expert reports, in response to Defendants’ November 22 sur-reply on Plaintiffs’ class certification motion. ECF 487. After reviewing Defendants’ 140-page sur-reply submission (four expert reports totaling 128 pages accompanying a 12 page brief) and consulting with our experts about their teaching and personal obligations over the holiday season, Plaintiffs respectfully request that the Court set a deadline of January 17, 2022 for Plaintiffs to file our responsive materials.

This deadline would provide Plaintiffs with 56 days after receipt of Defendants’ sur-reply papers, which is appropriate because it reflects roughly the same amount of time that Defendants utilized to prepare their sur-reply in opposition of class certification, plus a modest addition for the holidays. Specifically, Defendants had 48 days from the filing of Plaintiffs’ reply brief on October 5, 2021, until they filed their sur-reply on November 22, 2021. An equivalent period (plus one week for the Thanksgiving, Hannukah, Christmas, and New Year’s holidays) is suitable for Plaintiffs’ sur-sur-reply, as we are tasked with responding to Defendants’ voluminous response, which is hardly “narrow and targeted,” as Defendants promised in their request for leave to file a surreply (ECF 473), but instead covers essentially the full gamut of issues that Defendants raised in their earlier opposition materials. This timeframe is also warranted because Plaintiffs’ experts, including Professors Paul Asquith and Parag Pathak, have personal and professional obligations that will render them unavailable during certain portions of the holiday season. Accordingly, Plaintiffs respectfully submit that a deadline of January 17, 2022 is appropriate for filing our sur-sur reply materials.

Plaintiffs contacted Defendants and requested their consent to this schedule, but Defendants refused to agree to that request.

Professor Haoxiang Zhu: We also write to inform the Court that, on November 19, 2021, the United States Securities Exchange Commission announced its appointment of Plaintiffs' expert, Professor Haoxiang Zhu, as Director of the agency's Division of Trading and Markets, effective December 10, 2021.¹ As a result of this appointment, Professor Zhu will not be able to do further work on this matter while working for the government. However, he has detailed his relevant opinions in both an opening and reply report, been deposed by Defendants, and Plaintiffs' other experts will address any criticisms of Professor Zhu's work that Defendants' experts advanced in their sur-reply papers. Accordingly, this development should have no impact on the resolution of Plaintiffs' class certification motion.

Respectfully submitted,

/s/ Michael B. Eisenkraft

Michael B. Eisenkraft
COHEN MILSTEIN SELLERS & TOLL
PLLC

/s/ Daniel L. Brockett

Daniel L. Brockett
QUINN EMANUEL URQUHART &
SULLIVAN, LLP

¹ See Press Release: SEC Appoints Haoxiang Zhu Director of Division of Trading and Markets, SEC (Nov. 19, 2021), *available at* <https://www.sec.gov/news/press-release/2021-242>. "The Division of Trading and Markets establishes and maintains standards for fair, orderly, and efficient markets. The Division regulates the major securities market participants, including broker-dealers, self-regulatory organizations (such as stock exchanges, FINRA, and clearing agencies), and transfer agents." See U.S. Securities & Exchange Commission, "Trading and Markets," *available at* <https://www.sec.gov/divisions/trading-markets>.